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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/001,379 | 10/23/2001 | Michael John Bader | 2001B095 | 1300 |

23455 7590 03/27/2003

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EXAMINER

JACKSON, MONIQUE R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1773

DATE MAILED: 03/27/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/001,379

Applicant(s)

BADER, MICHAEL JOHN

Examiner

Monique R Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites the limitation "wherein said skin layer (b) is on the casting roll side of the film" however it is noted that the film according to claim 1, has two skin layers wherein at least one of said skin layers comprises a hydrocarbon resin and an ethylene copolymer. Hence, given the two skin layers may be different, it is unclear as to which skin layer is on the casting roll side of the film.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/12302 (WO'302) in view of DeLisio et al (USPN 6,458,469) or Peiffer et al (USPN 6,410,132.) WO'302 teaches a biaxially oriented polyethylene film comprising a microporous base layer of polyethylene, preferably MDPE or HDPE, and a cavitating agent, preferably calcium carbonate, in an amount of 1wt% to 30wt%; outer WVTR-controlling skin layers of polyethylene or ethylene-propylene copolymer or EPB copolymer; and preferably tie layers of

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polyethylene between the base and the skin layers (Abstract; Page 2, lines 21-30; Page 3, lines 12-28; Page 5, lines 3-12; Page 7, lines 3-17.) WO'302 teach that the film has gloss properties and excellent water vapor transmission with examples having a WVTR within the instantly claimed range and wherein the WVTR increases as cavitation increases wherein the amount of cavitating agent also affects the porosity of the base layer (Examples.) WO'302 teach that the film is produced by coextruding the layers, casting the coextruded film with the skin layer on the casting side and then orienting the film in machine direction and then the traverse direction (Page 7, line 30-Page 8, line 15; Page 11, Examples.) WO'302 does not teach that the incorporation of a hydrocarbon resin into the skin layer(s) in an amount of 10-20wt% as instantly claimed or that the film has the porosity and tear properties as instantly claimed. However, one having ordinary skill in the art would have been motivated to include conventional additives in the multilayer film wherein DeLisio et al and Peiffer et al teach that hydrocarbon resins such as terpene resin are added to the skin layer of a multilayer polyolefin film to improve heat sealing characteristics or optical properties of the film, wherein DeLisio et al teach up to 10wt% of the resin and Peiffer et al teach amounts of from 1 to 40% by weight wherein outer layers with hydrocarbon resins are particularly advantageous in respect to their optical properties such as gloss (DeLisio et al, Col. 1, lines 16-27 and Col. 4, lines 33-47; Peiffer et al, Col. 6, lines 18-29 and Col. 3, line 67-Col. 4, line 44.) Hence, one having ordinary skill in the art at the time of the invention would have been motivated to include conventional additives such as hydrocarbon resins like terpene resin in the outer or skin layers of the invention taught by WO'302 to improve the optical properties of the film, such as gloss, as taught by DeLisio et al and Peiffer et al, utilizing routine experimentation to determine the optimum amount of hydrocarbon resin to include and further utilizing routine

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experimentation to determine the optimum amount of cavitating agent to provide the desired porosity, WVTR and tear properties for a particular end use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R Jackson whose telephone number is 703-308-0428.

The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on 703-308-2367. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Monique R. Jackson
Primary Examiner
Technology Center 1700
March 24, 2003